

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

HARBOR REGIONAL CENTER, Service Agency.

OAH No. 2019120848

DECISION

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter¹ by videoconference on September 18, 2020.

¹ Due to the similarity of the issues and facts, this matter was consolidated for hearing purposes with OAH case number 2020030365. Before going on the record, the parties informed the ALJ that on September 19, 2020, the Notification of Resolution for OAH case number 2020030365 was filed with OAH.

Claimant was represented by Mark Woodsmall and Saba Ahmed, Attorneys at Law, and by her parents (Parents).² Claimant appeared briefly during the hearing but was otherwise not present.

Julie A. Ocheltree, Attorney at Law, Enright & Ocheltree LLP, represented the Harbor Regional Center (HRC or Service Agency). Latrina Fannin, HRC Manager of Rights and Quality Assurance, was also present.

The record was held open until October 5, 2020, to allow for submission of written Closing Argument. Closing Argument was timely received, the record was closed, and the matter was submitted for decision on October 5, 2020.

During review of the exhibits that were received in evidence, the ALJ noted that the copies of 2018 and 2020 Individual Program Plan (IPP) Addendums³ had the digital signature of HRC Service Coordinator Rithy Hanh but did not have the signature of any of Claimant's authorized representatives. Submission of the case for decision was vacated and the record reopened to allow the Service Agency to submit either copies of the signature pages or other documentation which would show that the IPP had been approved and for Claimant to file a response to the Service Agency's submission. Both the Service Agency and Claimant timely filed responses which were marked and admitted into evidence as follows: Exhibit 11 is the October 2, 2018 IPP

² Names are omitted and family titles are used to protect the privacy of Claimant and her family.

³ The 2018 IPP was offered by the Service Agency as Exhibit 6 and by Claimant as Exhibit C. The 2020 IPP was offered by the Service Agency as Exhibit 7 and by Claimant as Exhibit M. Exhibits 6, 7, C and M were admitted into evidence.

Acknowledgment Form; Exhibit 12 is the October 25, 2019 IPP Acknowledgement Form; Exhibit 13 is the Declaration of Rithy Hanh; Exhibit QQ is the December 19, 2018 Letter to HRC; Exhibit RR is the November 18, 2019 Letter to HRC; Exhibit SS is the Declaration of Mother; and Exhibit TT is the Declaration of Attorney Woodsmall.

The record was closed, and the matter resubmitted for decision on October 26, 2020.

ISSUES

Whether HRC should reimburse Family for amounts expended by Family on Claimant's behalf from February 25, 2019, until October 23, 2019, due to the alleged delay in providing Claimant with a supported living services assessment.

Whether HRC should reimburse Family for amounts expended by Family on Claimant's behalf due to the alleged delay in providing supported living services from October 23, 2019, to the present.

EVIDENCE

Documents: For the Service Agency, Exhibits 1-3 and 5-13.

For the Claimant, Exhibits A-D, G, I, L-M, R-T, Y, AA, MM, PP-TT.

Testimonial: For the Service Agency, Sherylenne Campbell, HRC Service Coordinator (SC); Jessica Guzman, HRC Client Services Manager (CSM)

For Claimant, Mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is eligible for services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) (Welf. & Inst. Code, § 4500 et seq.) based upon qualifying diagnoses of intellectual disability (ID) and epilepsy. Parents were appointed Claimant's conservators on September 27, 2016.

2. Claimant requested various services and funds, including: (1) supported living services (SLS); (2) increased respite hours; (3) reimbursement for a functional behavior assessment; (4) more hours of ABA services (5) funding for horseback riding; and (6) funding to train Claimant's dog.

3. On December 16, 2019, Mother filed a fair hearing request on Claimant's behalf. The reason for the request, in relevant part, was that "[The Service Agency] failed to timely provide a SLS assessment and SLS services to [Claimant]. Parents had requested a [SLS] assessment at the February 26, 2019 IPP meeting; however, the HRC failed to provide an SLS assessment with Carolyn Yano until October 2, 2019. As a result, [Claimant] went without SLS services for almost eight months due to the delay caused by HRC." (Exhibit 2, p. HRC-000008.)

4A. A hearing in this matter was timely set for February 6, 2020.

B. Continuances were requested by Claimant on January 21, 2020, and then again on March 31, 2020, waiving the time limit prescribed by law for holding the hearing and for a Decision to be issued in this matter. HRC did not oppose the continuances. The continuances were granted for good cause and the matter was set for hearing on July 20, 2020.

C. On July 16, 202, HRC and parents entered into a joint stipulation to convert the scheduled hearing to a mediation and the hearing was continued to August 14, 2020.

D. During the July 20, 2020 mediation, parties requested that the August 14, 2020 hearing be continued. The continuance was granted and the matter was continued to September 18, 2020.

E. At the outset of the hearing, the ALJ determined jurisdiction exists in this case only to decide the two issues enumerated above.

5. All jurisdictional requirements have been met.

Background

6. Claimant is a 23-year old consumer diagnosed with severe intellectual disability (ID), epilepsy and Angelman Syndrome, a rare genetic disorder affecting the nervous system. In April 2017, Claimant received an additional diagnosis of Autism Spectrum Disorder (autism).

7. Claimant lives in the family home with Parents, her brother and a full-time, live-in caregiver in the Service Agency's catchment area. Claimant receives a \$640 Supplemental Security Income (SSI) benefit, 283 hours of In-Home Supportive Services (IHSS) each month and is also eligible to receive 24 hours of HRC funded respite care per month.

8. In June 2016, Claimant completed Palos Verdes Peninsula High School with a certificate of completion. After completing high school, Claimant attended the Palos Verdes High School Life Skills Program, a transition program offered through the school district, for a short period in February 2017. Claimant, however, soon stopped

attending the program as the program's goals and activities were not suited to Claimant's more intensive and individualized needs. The Service Agency subsequently proposed six other day programs. After visiting and observing the proposed day programs, Parents rejected them as well, considering them inappropriate for Claimant.

2018 Individual Program Plan

9. On October 2, 2018, an Individual Program Plan (IPP) meeting was conducted with Parents, Attorney Woodsmall, HRC Service Coordinator (SC) Rithy Hanh and HRC Client Service Manager (CSM) Maria Fitzsimons. An Individual Program Plan (IPP) was generated (2018 IPP).

10.A. The 2018 IPP was divided into the following categories: (1) Home. (2) Daily Living Needs (3) Health/Medical; (4) Behavioral Health; (5) School/Program/Employer (6) Social/Recreational/Community; (7) Financial /Money Management; and (8) Future Planning. The 2018 IPP addressed Claimant's current status, her goals, desired outcomes and plans to reach the goals.

B. Under "Home," it was noted that Claimant resided with Parents and her older sibling in the family home in Rancho Palos Verdes. Under "Desired Outcome" it was noted that "[Parents] will provide support and allow [Claimant] to continue living at home." (Exhibit C, p. C-56.) Under "Plan for Client/Family," it was noted that "Parents will continue to provide a safe and nurturing home environment" while the plan for HRC supports was that the "[SC] would provide the family with various supports as needed. [¶] HRC is funding 24 hours of respite service through Cambrian Homecare from 11/01/18-10/31/19." (*Ibid.*)

C. Under "Daily Living Needs," it was noted that Claimant required constant care and supervision. The "Plan for Client/Family" was that "[Claimant's] family will

continue to provide a safe and nurturing home environment to help her grow in terms of daily functioning.” (Exhibit C, p. 4.) The plan for HRC was to provide funding for respite services.

D. Under “School/Program/Employer,” it was noted that Parents requested the Service Agency fund for “The Parents’ Vendor Program.” (Exh. 6, HRC-0028.) Due to the broad nature of services requested, the Service Agency requested specific details from Parents on who they envisioned should be included in “The Parents’ Vendor Program.” (*Ibid.*)

11. The completed 2018 IPP was mailed to Parents on November 26, 2018, but it was never signed by Parents. According to Mother, “[t]he document contained incorrect information that was contradictory to what [Parents and Attorney Woodsmall] requested in the meeting.” (Exh. SS, p. 2.) Mother had a letter dated December 19, 2018, sent to the Service Agency in response on December 23, 2018 (12/19/18 Letter). The fax transmission sheet, however, indicates that the letter was not faxed until December 26, 2019.

12. The 12/19/18 Letter, states in relevant part,

This letter is to provide our feedback regarding the IPP. At this time, we wish to pursue obtaining the needed supports and services for [Claimant] through parent vendored providers. However, the planning process will take some time and [Claimant] needs these supports and services in place now.

The following lists our concerns and [Claimant's] needs that we request to be reflected in her October 2, 2018, IPP document:

[¶] . . . [¶]

- Supported Living Services by a preferred provider (to be determined), to support the following activities:

-Vocational skills

-Safety awareness

-Personal hygiene

-Feeding

-Recreational activities such as musical experiences, gardening, dancing, and the theater arts for purposes of treating [Claimant's] underlying condition.

-Social activities with peers.

(Exhibit QQ.)

13. The letter does not indicate that there were any errors in the 2018 IPP. Rather, the letter appears to ask the Service Agency to update the 2018 IPP to include additional information.

Request for SLS

14. The first request for SLS support was made during the October 2, 2018 IPP meeting. The initial request and the subsequent discussion of the request for SLS were documented in the Service Agency's interdisciplinary (ID) notes. ID notes are prepared by Service Agency employees to document events, contacts, and discussions related to its consumers. Due to the number of requests made by Parents, many of the individual ID notes contain discussion requests for multiple services. Only the information in the ID notes related to SLS is discussed below.

15. According to the ID Note for October 2, 2018, Parents were working with Attorney Woodsmall "to propose a plan for HRC to fund for." (Exh. B, C-17.) The plan included SLS, independent living services, occupational therapy, speech therapy and behavioral services.

16. On October 16, 2018, SC Hanh consulted with HRC Service Provider Relations Specialist (Specialist) Erika Landeros. According to the ID note for that day, "Parents and Attorney Woodmall "wanted HRC to provide SLS/ILS service for [Claimant.]. [Claimant will] still be residing with her parents at home." (Exh B, p. C-45.) During the meeting, Specialist Landeros explained to SC Hanh that SLS can be provided once Claimant intends to move out of the family home and wants to become independent in the community. Specialist Landeros also provided SC Hanh with HRC guidelines and policy for SLS.

17. On October 10, 2018, SC Hanh emailed Mother, copying CSM Maria Fitzsimons, on a meeting to obtain more information regarding her request. On October 12, 2018, SC Hanh sent Mother another email asking for details on how she envisioned the parent designed program. SC Hanh followed up with another email on

October 23, 2018, again asking Mother for more details on the “parents design program.” (Exh. B, C-45.)

18. Mother responded on October 26, 2018 and stated that she was battling a cold and was hoping she would have the energy to meet with the Service Agency the following Monday, October 29, 2018. A meeting did not take place on October 29. On October 30, 2018, Mother emailed SC Hanh advising him that she would be absent for extended periods in November and December and stated that she could give SC Hanh the specifics in writing or over the phone. SC Hanh responded to Mother, stating that the Service Agency could meet during the times when she was available with a covering CSM if needed, or that Mother could submit the specifics of what she wanted in the program in writing, whichever worked best for Mother. No response was received.

19. On November 29, 2018, SC Hanh sent another email following up on his request for additional information.

20. No communication was received from Claimant until January 2, 2019, when SC Hanh received the 12/19/18 Letter from Attorney Woodsmall.

21. Throughout the month of January 2019, SC Hanh consulted with various individuals, including CSM Fitzsimons, Latrina Fannin, the HRC Manager of Rights and Quality, and others regarding Claimant’s request for each of the different services.

22. On February 1, 2019, Mother sent SC Hanh an email stating that she wanted the Service Agency’s updated availability to meet to further discuss Claimant’s needs. SC Hanh responded the same day and provided Mother with a variety of dates. No response was received.

23. On February 7, 2019, SC Hanh sent a follow-up email and advised Mother that, the only remaining dates available were February 28, 2019 and March 1, 2019. The following day, Mother responded stating that Attorney Woodsmall was only available on February 26, 2019, and asked SC Hanh if they could schedule the meeting then. After reviewing the email with CSM Fitzsimons, SC Hanh responded and agreed to meet on that date.

24. A meeting was conducted on February 26, 2019. Though Mother and Attorney Woodsmall refer to this meeting in their respective Declarations as an IPP meeting (Exhibits SS and TT), there was no evidence that it was, in fact, an IPP meeting. IPP meetings are generally conducted by regional centers once a year, close to a consumer's birthday. Claimant's birthday is in late September and the IPP meeting had taken place on October 2, 2018. The meeting was attended by SC Hanh, covering CSM Josephina Cunningham, Parents and Attorney Woodsmall. During the meeting, a the services referenced in Claimant's 12/19/18 letter, including SLS, were discussed. Attorney Woodsmall stated that even though Claimant required assistance with all of her daily living skills Parents wanted to have an SLS assessment completed by the Service Agency. (Exh. B, p. C-39, Exhibit SS p. 2, Exh. TT, p. 6.) Following the meeting, SC Hanh updated the information regarding Claimant's primary and secondary insurance in her 2018 IPP.

25. The same day, February 26, 2019, SC Hanh prepared and sent the referral packet for the SLS assessment to Specialist Landeros and emailed Mother to advise her that someone would be contacting her to set up the SLS assessment. Mother responded by email on February 28, 2019, thanking SC Hanh for his prompt response. The justification provided for the SLS assessment was that "SLS assessment is being request [*sic*] by [Claimant's] parents. [Claimant] currently resides with her family but

family is looking into getting a place for her with support of SLS. By completing SLS Assessment, team will determine what level of SLS supports are needed to support her in independent living.” (Exh. B, p. C-37.)

26. On March 4, 2019, SC Hanh prepared and had a decision letter sent to Parents, explaining the status of each of their requests for services.

27. On April 1, 2019, SC Hanh followed up on the status of Claimant’s SLS assessment with SLS Assessor Yano, who was then HRC’s only third-party vendor who conducted SLS assessments. SLS Assessor Yano stated that she did not receive a referral for Claimant from Specialist Landeros. In respondent, Specialist Landeros forwarded an email to SLS Assessor Yano showing that the referral had been sent on February 27, 2019, and instructed SLS Assessor Yano to give Claimant’s case priority.

28. On April 19, 2019, SC Hanh again followed up with SLS Assessor Yano on the status of the SLS assessment. SLS Assessor Yano again stated that she had not received the referral. SC Hanh responded stating that the referral packet was first sent to her on February 27, 2019, and then again on April 1, 2019. After reviewing the referral packet, SC Hanh re-sent it to SLS Assessor Yano the same day.

29. On May 9, 2019, SLS Assessor Yano responded claiming again that she did not receive the referral packet. SC Hanh contacted Specialist Landeros and asked for her assistance in dealing with SLS Assessor Yano.

30. On May 13, 2019, SC Hanh received an email from Attorney Woodsmall regarding the status of the request for services. In response, SC Hanh explained that a decision letter had been mailed to the family, a copy of which he provided. The same day SC Hanh emailed Specialist Landeros asking her to follow up with SLS Assessor Yano.

31. On June 4, 2019, SLS Assessor Yano sent an email to Specialist Landeros stating that she had finally received the referral packet and that she “does not know what happened to it but finally got it.” (Exh. B, p. C-33.)

32. On June 24, 2019, SC Hanh followed up with SLS Assessor Yano, informing her that the authorization was to expire on June 30, 2019, and asked whether the authorization would cover Claimant’s assessment. SLS Assessor Yano sent an email apologizing for not completing the SLS assessment, stating that she had been having difficulty scheduling with Mother as she is “continually on-the-go with various therapies and activities with [Claimant].” (Exh. B, p. C-33.) She further stated that she had received a number of urgent SLS assessment requests which she had to give priority but hoped to see Claimant’s family that week.

33. On September 6, 2019, SC Hanh received an email from SLS Assessor Yano apologizing for the delay in completing Claimant’s SLS assessment. SLS Assessor Yano stated that with the opening of two HOPE Foundation apartments she was being inundated with “urgent” referrals from clients who had already tentatively chosen to move into independent living. SLS Assessor Yano advised SC Hanh that she had been told that those clients would have to take priority over clients like Claimant who are in relatively stable living situations. SLS Assessor Yano promised to make Claimant a priority the following week. SLS Assessor Yano also requested that a new authorization be obtained as the prior authorization had expired. SC Hanh requested new authorization for the SLS assessment that day.

34. On October 8, 2019, SC Hanh emailed SLS Assessor Yano to follow up on the status of the SLS assessment. SC Hanh informed SLS Assessor Yano that the Service Agency would be meeting with Parents on October 25, 2019 and that the Service Agency wanted to make sure that the report was received before the October

25, 2019 meeting so that it could be reviewed with the CSM before the October 25, 2019 meeting. SLS Assessor Yano advised SC Hanh that she completed the SLS Assessment on October 1, 2019. When SC Hanh inquired as to whether the report could be completed in time for the scheduled October 25, 2019 IPP meeting, SLS Assessor Yano assured SC SC Hanh "she will most certainly get the report to [SC Hanh] well in advance." (Exh. B, p. C-27.)

35. By October 23, 2019, the Service Agency had not received the SLS Assessment Report. SC Hanh emailed SLS Assessor Yano to follow up on the status of the report. SLS Assessor Yano stated in response that she was working on the report and should be able to send it by the afternoon on October 24, 2019. The Service Agency did not receive the report on October 24, 2019.

36. SLS Assessor Yano emailed SC Hanh a draft copy of the SLS Assessment Report the morning of October 25, 2019. Shortly thereafter, the IPP meeting was held.

37. Despite the Service Agency's attempts to contact SLS Assessor Yano, the finalized SLS Assessment Report was not received until November 15, 2019. On November 20, 2019, the Service Agency forwarded a copy of the SLS Assessment Report to Parents and Attorney Woodsmall.

SLS Assessment Report

38. The October 2019 SLS Assessment Report prepared by Assessor Yano noted that, by her account, Mother "envisions [Claimant] eventually in her own residence – with 24-hour supervision from caregivers, with funding by a combination of personal funds, IHSS, respite and SLS." (Exh. I, p. C-97.) Parents are requesting support and assistance from HRC and others and feel that planning for Claimant should begin to include SLS preparation. (Exh. I, p. C-97, 98.)

39. Mother reported that Parents are considering creating Claimant's "own space" within the home as the first step in transitioning Claimant's "separation." (Exh. I, p. 98.) This would involve designating and isolating her two adjoining bedrooms and bathroom as a suite with its own entrance from the rear door of the residence and accessed by a separate stairway.

40. It was noted that Claimant demonstrated delay across all domains and that "[s]he currently receives 24 hour care and supervision from live-in, and rotating caregivers – paid for by IHSS (283 hours/month) and family.." (Exh. I, p. C-103.) "With little extended family here, [Parents] are understandably concerned and have given future planning in re. to [Claimant's] care some consideration. While the implementation of a plan, proposed by the family, would involve careful coordination and cooperation between a number of service providers/caregivers and does not constitute a traditional independent living situation, it would allow [Claimant] a certain amount of personal autonomy. (*Ibid.*)

2020 Individual Program Plan

41. The October 25, 2019 IPP meeting was conducted with Parents, Attorney Woodsmall, SC Hanh and CSM Fitzsimons. Also in attendance were CSM Jessica Guzman and SC Sherylenne Campbell, who were present to begin transitioning Claimant to the Adult Services Department (Adult Services).

42. During the meeting, CSM Fitzsimons explained to Parents that according to HRC's SLS policy, consumer need to live outside the home in order to receive SLS. (Exh. B, p. C-21.) Parents advised the Service Agency that their residence was in the process of being modified and a different entrance was being added for Claimant. Parents also stated that Claimant would be living independently with supports that

Parents already fund for, and an IHSS worker, and SLS. Parents requested that the Service Agency support Claimant with SLS. Attorney Woodsmall shared that the described living arrangements would be temporary as Parents would like to see how it worked out before finding a separate home for Claimant. The IPP meeting could not be concluded as the observation could not be completed that day due to Parents' schedule. (Exh. 9, p, HRC-00128.)

43. On November 26, 2019, SC Hanh emailed Parents and Attorney Woodsmall to "touch base" on setting an observation with Claimant in order to complete the annual IPP meeting and asked when the best date, time and place would be to set up the observation. SC Hanh further advised that once the observation was completed the 2020 IPP would be completed within 22 days and sent to the family. Between November 26, 2019, and December 26, 2019. The Service Agency sent Parents and Attorney Woodsmall a number of emails requesting dates when the the observation could be scheduled. Mother responded on December 26, 2019, stating that Claimant would be available on January 6, 2020 from 3:00 pm until 6:00 pm. CSM Fitzsimons responded the same day, advising Mother that neither she nor SC Hanh was available that day and proposed alternative dates. The Service Agency did not receive a response to the proposed dates. SC Hanh sent Mother emails on January 7, 2020, to follow up on scheduling the observation. SC Hanh received a response from Mother on January 13, 2020, advising SC Hanh that she would be out of town until January 18, 2020, and requesting that the Service Agency provide her with dates. SC Hanh emailed Mother with dates when he and CSM Fitzsimons' would be available the following week. On January 20, 2020, Mother emailed that the observation could be conducted later that day, or on one of the following two days. After receiving the email, SC Hanh conferred with CSM Fitzsimons and agreed to conduct the observation on January 22, 2020.

44. The observation was conducted on January 22, 2020. Present during the observation were Claimant, Mother, SC Hanh and CSM Fitzsimons. On February 13, 2020, the IPP was completed (2020 IPP) and emailed to Claimant's attorneys, Attorney Woodsmall and Saba Ahmed, and Parents.

45A. The 2020 IPP was structured like the 2018 IPP, divided into: (1) Home. (2) Daily Living Needs (3) Health/Medical; (4) Behavioral Health; (5) School /Program /Employer (6) Social /Recreational /Community; (7) Financial /Money Management; and (8) Future Planning. The 2020 IPP addressed Claimant's current status, her goals, desired outcomes and plans to reach the goals.

B. Under "Home," it was noted that Claimant was currently residing with Parents and her older sibling in the family home in Rancho Palos Verdes but that Parents planned to modify their home to create a separate residence for Claimant. It was also noted that Parents had requested an increase in respite hours. Under "Desired Outcome," it was noted that "[Parents] will provide support and allow [Claimant] to continue living at home." (Exhibit M, p. C-117.) Under "Plan for Client/Family," it was noted that "Parents will continue to provide a safe and nurturing home environment," while the plan for HRC supports was for HRC to fund 20 hours of respite per month to allow Parents an occasional break. (*Ibid.*)

C. Under "School/Program/Employer," it was noted that Parents requested the Service Agency fund for "The Parents' Vendor Program," which includes ILS, SLS, physical, occupational and behavior support services. The Service Agency met with Parents and Attorney Woodsmall on February 26, 2019, to discuss the details of the envisioned program. The Service Agency reviewed the request and sent Parents a decision letter on March 4, 2019.

Funding for SLS

46. Claimant was transitioned to Adult Services on June 20, 2020. SC Campbell is currently Claimant's assigned service coordinator and CSM Guzman is SC Campbell's supervisor.

47. On July 14, 2020, CSM Guzman facilitated a Zoom meeting with Mother to tour the family home in order to approve the residence as separated, which would make Claimant eligible for SLS. That morning, however, Parents shared that they would be moving out of the family home and into a new residence. SC Guzman notified Parents a tour was then unnecessary. Mother also shared that Claimant had one staff person whom Parents would like the SLS Service Provider to hire from 9:00 a.m. to 3:00 p.m. CSM Guzman agreed to share that information with HRC's vendorized service providers for consideration.

48. Later that day, SC Campbell compiled the referral package and emailed it to Specialist Landeros. Four SLS service providers were identified: (1) Life Steps Foundation (Life Steps); (2) Easter Seals; (3) Cal Mentor; and (4) Robert Murphy Supportive Solutions (Robert Murphy).

49. On July 17, 2020, SC Campbell received an email from Specialist Landeros advising her that both Easter Seals and Cal Mentor were not able to staff 24 hours of SLS for Claimant.

50. On July 20, 2020, SC Campbell contacted Robert Murphy inquiring whether he would be willing to take Claimant's case to provide 24 hours of SLS. She also shared that Claimant's family would like it if the SLS was provided by Claimant's long time staff member. On July 30, 2020, SC Campbell received a call from Robert Murphy, who advised he was able to take on a 24-hour case.

51. On August 11, 2020, CSM Guzman emailed Mother that none of the SLS providers identified could proceed with Claimant's referral as they were experiencing staffing shortages. CSM Guzman also shared that HRC was continuing to explore support through My Life and explained the referral process to Mother.

52. SC Campbell called Mother to confirm how many staff would have to be hired by HRC's SLS vendors to provide SLS to Claimant. When she could not reach Mother, SC Campbell left a message for a return call.

53. On August 12, 2020, CSM Guzman contacted a representative from My Life who shared that My Life could not accommodate Claimant due to her geographic location. The following day, CSM Guzman contacted Specialist Landeros and requested she revisit SLS referrals with four identified providers. Specialist Landeros emailed CSM Guzman the same list of vendors she had previously identified on July 14, 2020.

54. According to CSM Guzman, the Service Agency can fund SLS both before and after a consumer has their own living space. The services that are provided under SLS prior to the consumer moving into their own living space include searching for apartments, applying for apartments, and preparation for the consumer's move into their own dwelling. Claimant had not been eligible for SLS as Parents had notified the Service Agency of their plan to have Claimant continue to reside in the family home. Claimant became eligible for SLS services once Parents notified the Service Agency of their intention to reside at another residence.

55. The Service Agency began looking for SLS providers willing to provide services to Claimant once they were notified of Parents' intention to move out of the family home. The issue, however, is that HRC has not been able to identify any SLS providers willing to take on a client who required 24-hour services. Though it has

always been difficult to find vendors willing to provide 24-hour services it has been considerably more difficult during the current COVID-19 crisis.

Mother's Testimony

56. At hearing, Mother testified regarding the significant support Claimant requires support in all areas of her life, 24 hours a day, seven days a week.

57. Mother asserted that during the October 25, 2018 IPP meeting, Parents requested supports to have Claimant move into an independent living situation. Mother asserted that they have never insisted that this transition be done in any specific way or required any specific residence for Claimant. Parents have always been willing to cooperate with a team that takes Claimant's best interests into consideration. The Service Agency, however, had never proposed an alternate living plan, such as renting an apartment, for Claimant.

58. Parents did, however, initially plan on renovating their home so that Claimant could have her own entrance and kitchen, which would allow for SLS. They eventually decided to move to another residence they own. They did not realize before that this was an option. Parents, however, continue to reside in the family home with Claimant as they cannot leave her in the home without SLS supports.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Welfare and Institutions Code⁴ Section 4710.5, subdivision (a), "Any applicant for or recipient of services . . . who is dissatisfied with any decision or action of the service agency which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall . . . be afforded an opportunity for a fair hearing." Claimant requested a hearing to appeal HRC's alleged delay in providing SLS. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

Burden and Standard of Proof

2. When an individual seeks to establish eligibility for government benefits or services, the burden of proof is on the individual. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) As no other statute or law specifically applies, the standard of proof in this case is preponderance of the evidence. (See Evid. Code, §§ 115, 500.) Therefore, the burden is on Claimant to demonstrate that Service Agency's decision is incorrect by a preponderance of the evidence.

Applicable Law

3. In enacting the Lanterman Act, the Legislature accepted responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be available to enable persons with developmental

⁴ All further statutory references are to the Welfare and Institutions Code unless noted otherwise.

disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. (§ 4501.) The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620, et seq.)

4. The consumer's needs are determined through the IPP process. (§ 4646.) The process "is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments." (§ 4646, subd. (a).)

5. The IPP must set forth goals and objectives for the consumer, contain provisions for the acquisition of services (which must be provided based upon the consumer's developmental needs), and reflect the particular desires and preferences of the consumer and the family when appropriate. (§§ 4646, 4646.5, subds. (a)(1), (a)(2), and (a)(4), 4512, subd. (b), and 4648, subd. (a)(6)(E).)

6. Although an IPP must reflect the needs and preferences of the consumer, a regional center is not mandated to provide all the services a consumer may request. A regional center's provision of services to consumers and their families must "reflect the cost-effective use of public resources." (§ 4646, subd. (a).) A regional center also has discretion in determining which services it should purchase to best accomplish all or any part of a consumer's IPP. (§ 4648.) This entails a review of a consumer's needs, progress and circumstances, as well as consideration of a regional center's service policies, resources and professional judgment as to how the IPP can best be implemented. (§§ 4646, 4648, 4624, 4630, subd. (b), and 4651; *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 233.)

7. Among the services regional centers fund is SLS, which is defined by the Lanterman Act as “a range of appropriate supervision, support, and training in the consumer’s place of residence, designed to maximize independence.” (§ 4354, subd. (h).)

8. The range of SLS available includes: assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; social, behavioral, and daily living skills training and support; providing respite and emergency relief for personal care attendants; and facilitating community participation. (See § 4689, subd. (c).)

9. Regulations promulgated under the Lanterman Act define SLS as including any individually designed service which assists an individual consumer to live in his or her own home, with support available as often and for as long as it is needed; and to make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home. (Cal. Code Regs., tit. 17, § 58614, subd. (a).)

Analysis

10. Claimant argued for reimbursement for the period of time between the February 25, 2019 meeting, when the Service Agency agreed to fund a SLS assessment, and October 23, 2019, the date of the SLS Assessment Report.

11. Though it is clear that there was a delay in getting the SLS assessment completed, the evidence did not establish that the delay could be attributed to the

Service Agency. As set forth in Factual Findings 22 through 25, the Service Agency made repeated efforts to get Claimant's SLS assessment completed and to obtain a copy of the SLS Assessment Report.

12. Further, even if the delay by the SLS assessment vendor could be attributed to the Service Agency, the evidence did not establish that SLS supports were then necessary or appropriate for Claimant during that time period. Parents had expressed their intention to allow Claimant to reside in the family home. During the SLS assessment on October 1, 2019, Mother expressed Parent's intention to modify the home to create a separate living space, which would permit Claimant to receive SLS services. Parents reiterated this intention during the October 25, 2019 IPP meeting. As there were no plans to relocate Claimant, Claimant did not establish by a preponderance of the evidence that she needed or was entitled to the type of SLS provided to consumers prior to relocating into their own space.

13. Claimant argued that Family is entitled to reimbursement for amounts expended on her behalf due to the delay in providing SLS from October 23, 2019 to the present.

14. In general, the Lanterman Act does not specifically authorize retroactive reimbursement of service costs to families in the fair hearing context. Services and supports must be determined for an individual through the IPP process, and a regional center must follow certain purchase and vendorization procedures to obtain services for an individual. (§§ 4648; 4646, subd. (d).) The lack of specific statutory authorization, however, is not necessarily dispositive of the issue. Reimbursement may be available in particular cases where equity may require reimbursement in particular cases in order to fulfill the purposes and intent of the Lanterman Act. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384.)

15. In the present matter, the evidence established Claimant was not entitled to SLS until July 14, 2020, when the Service Agency was notified that Parents intended on moving out of the family home. The Service Agency immediately attempted to locate a vendor willing to accept Claimant's case but was unsuccessful. The Service Agency is a funding agency, not a staffing agency. The evidence established that forces beyond the Service Agency's control resulted in Claimant's not receiving her allotted SLS hours. Therefore, the equities in this case do not allow for reimbursement.

ORDER

Claimant's appeal is denied.

DATE:

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.